

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 910 OF 2022

Sampat Namdev Shinde & Ors.

..Appellants

Versus

The State of Maharashtra & Anr.

..Respondents

Mr. Sachin H. Deokar a/w. Vignesh Ashokan for Appellants.

Smt. M. R. Tidke, APP for State/Respondent No.1.

Mr. Ramji T. Kotali for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 29th NOVEMBER 2022

PC :

1. The Appellants have challenged the order dated 01/09/2022 passed by learned Special Judge (Cases under SC/ST Act) and Additional Sessions Judge, Pune in Criminal Bail Application No. 3530 of 2022. In effect, the appellants are seeking anticipatory bail in connection with C.R.No.515 of 2022 dated 23/05/2022 registered with Shikrapur police station, Pune, under sections 447, 427, 420, 323, 504 r/w. 34 of the I.P.C., under sections 3(1)(r), 3(1)(s), 3(1)(g) and 3(1)(f) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under section 7(1)(d) of the Protection of Civil Rights Act,

1955.

2. Heard Shri. Sachin Deokar, learned counsel for the appellants, Smt. Tidke, learned APP for the State and Shri. Ramji Kotali, learned counsel for the Respondent No.2.

3. The F.I.R. is lodged by the Respondent No.2. He has stated that, he was belonging to Scheduled Caste. He has a land at Gat No.639 at Koregaon Bhima, admeasuring 17 Gunthe. In the year 2016, he observed that somebody was making efforts to create plotting in the land. He made inquiries. He came to know that the plotting was done by Shinde Developers which was owned by Appellant No.1 Soham and the Appellant No.2 Rahul. The first informant went to the spot and asked the Appellant Rahul about it. At that time, the appellant Rahul told him that, it was his land and that the complainant had no connection with the land. Thereafter, the Respondent No.2 left from there.

4. On 21/04/2017, at about 1.00p.m. he along with his family members went to the spot. At that time, the Appellants and their workers were removing the board in the name of

informant/respondent No.2. He questioned the appellants. At that time, the appellants beat him and uttered derogatory words with reference to his caste. On this basis the F.I.R. was lodged on 23/05/2022.

5. Learned counsel for the appellants submitted that the Respondent No.2 had suppressed important facts from the F.I.R. The Respondent No.2 had executed a Power of Attorney in favour of the Appellant No.1 in the year 1998 itself. Bases on that Power of Attorney, the Appellant No.1 had initially sold that property to Shekhar Shinde, who in turn had sold the same property to Babytai Shinde. The Appellant Nos.2 and 3 are Babytai's sons and, therefore, those appellants have full rights over the property. He submitted that the Respondent No.2 has not approached any Civil court to establish his rights to the property. He relied on the 7/12 extract which is annexed to the reply of the Respondent No.2. According to learned counsel for the Appellants, the 7/12 extract mentions name of Babytai as one of the owners of the same land. Though, same 7/12 extract mentions name of the Respondent No.2, the Appellant Nos.2 and 3 have filed application for deleting

his name. He further submitted that, there is inordinate delay in filing the F.I.R.

6. Learned counsel for the Respondent No.2, as well as, learned APP opposed this appeal. They submitted that the offence under the Atrocities Act is made out because the Respondent No.2 who belongs to Scheduled Caste is deprived of his possession and rights in the same land. They submitted that the 7/12 extract does show name of the Respondent No.2 and, therefore, his rights to the land are sufficiently established. They further relied on the complaint dated 21/04/2017 made by the Respondent No.2 to the Police Inspector of Shikrapur police station, wherein the incident dated 21/04/2017 was mentioned and grievance was made in respect of that incident.

7. I have considered these submissions. As far as, contention of the Respondent No.2 regarding approaching police on 21/04/2017 is concerned, there is no reference to any derogatory utterance regarding caste of the Respondent No.2. The said incident had allegedly taken place on 21/04/2017 and the

F.I.R. is lodged on 23/05/2022 i.e. after more than 5 years. This delay is certainly inordinate. There is no explanation offered for not approaching the authorities before that. Moreover, the F.I.R. does not make any reference to the Power of Attorney through which the Appellant No.1 was given power regarding the same property by the Respondent No.2 himself. Only in the supplementary statement dated 03/06/2022, there is a reference to the Power of Attorney and for the first time the allegations were made that the Respondent No.2 has not received any amount for sale of that particular land. All these allegations are made much belatedly. There is no conclusive proof of ownership or prima facie proof of possession of property, except 7/12 extract which also mentions name of Babytai. Considering all these backgrounds, there appears to be some civil dispute. It does not appear that the Respondent No.2 was deprived of his rights because he belonged to Scheduled Caste. All these issues will have to be decided during trial. The Appellants have made out a case for grant of anticipatory bail.

8. Hence, the order:

ORDER

- (i) In the event of their arrest in connection with C.R.No.515 of 2022 registered with Shikrapur police station, Pune, the applicants are directed to be released on bail on their furnishing P. R. bonds in the sum of Rs.30,000/- each (Rupees Thirty Thousand each Only) with one or two sureties each in the like amount.
- (ii) The Applicants shall cooperate with the investigation.
- (iii) All these observations are made only for the decision of this Appeal.
- (v) With these observations, the Appeal is disposed of.

(SARANG V. KOTWAL, J.)